

**REMARKS:**

The foregoing amendments amended claims 33, 38, 46, 48, and 62 by inserting the word "automatically" therein. For example, claim 33, lines 12-14 was amended to define, "and management information production means automatically producing management information based on said work machine information." Claim 38, lines 22-23 was amended to define, "said server apparatus automatically producing a scheduled work plan, based on ..." The server means in claims 46, 48, and 62 were amended in a manner similar to the amendment in claim 38.

Claims 33-64 remain in the application for consideration by the examiner. Applicant respectfully requests reconsideration and allowance of these claims for at least the following reasons.

*Official Notice*

The Official action mailed on May 7, 2007 took Official Notice or stated that the following eight facts are common knowledge ("alleged statements of common knowledge").

- (1) It is old and well known in the art to notify relevant parties of the status and availability (or unavailability) of a work machine at a site (page 3 of the Official action),
- (2) Connecting data terminals to an electronic communication network, such as the Internet, is a step that is old and well known in the art (page 3 of the Official action),
- (3) Displaying information is old and well known in the art (page 4 of the Official action),
- (4) It is old and well known in the art for work plans to comprise a plurality of tasks (page 4 of the Official action),
- (5) It is well known in the art to assign resources to schedule tasks (page 4 of the Official action),
- (6) It is old and well known in the art to collect data regarding environmental conditions (page 4 of the Official action),
- (7) Local, federal and international ordinances, regulations, and laws govern acceptable noise levels and toxic chemical concentration limits for areas in which work is performed (page 4 of the Official action), and

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- (8) It is old and well known in the art to distribute information only to leaders, who, in turn propagate the distribution information to subordinates as necessary (Newly raised in the outstanding Office Action on page 9 thereof).

Applicant hereby again traverses the aforesaid alleged statements (1)-(8) of common knowledge. Since this voluntary amendment is being filed together with a request for continued examination (RCE) under 37 C.F.R. §1.114, applicant respectfully submits that the present traversal of the aforesaid alleged statements (1)-(8) of common knowledge is timely. For example, as stated in 37 C.F.R. §1.114(d);

If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered.

This voluntary amendment includes applicant's submission under 37 C.F.R. §1.114, and this voluntary amendment traverses the aforesaid alleged statements (1)-(8) of common knowledge. Applicant's traversal of the aforesaid alleged statements (1)-(8) of common knowledge is set forth in more detail below. Since a submission pursuant to 37 C.F.R. §1.114(d) will be entered and considered, applicant's traversal of the aforesaid alleged statements (1)-(8) of common knowledge herein is timely.

In other words, the filing of an RCE has the same legal effect as filing a continuation application. In a continuation application, the examiner could cite positions of Official Notice against applicant's claims in a first Office action, and an applicant's traversal of the positions of Official Notice in a response to the first Office Action would be timely. This voluntary amendment filed together with an RCE establishes the same legal situation. Therefore, applicant respectfully requests that the examiner appropriately respond to the specific traversals of the aforesaid alleged facts (1)-(8) from page 31, line 2 from the bottom of the page, through page 37,

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line 2 of the response after final filed on October 9, 2007, which are incorporated herein by reference.

Furthermore, applicant incorporates herein by reference the arguments set forth in the response after final filed on October 9, 2007, especially those from page 30, line 2 from the bottom of the page, through page 31, line 3 from the bottom of the page, which explained that applicant's previous traversals of any alleged Official Notice was timely and proper.

In the Advisory Action mailed on October 25, 2007 included a page or so (pages 2 and 3) in a very small type explaining that the maintaining of Official Notice was indeed proper. The Advisory Action stated that Official Notice statements (1)-(7) were not adequately or timely traversed in the response filed after the Official action taking such Official Notice.

As mentioned above, since this voluntary amendment is being filed together with a request for continued examination (RCE) under 37 C.F.R. §1.114, applicant respectfully submits that the present traversal of the aforesaid alleged statements (1)-(8) of common knowledge or Official Notice is timely. Therefore, applicant respectfully submits that the issue of timeliness for challenging the statements of Official Notice in the Official action mailed on May 7, 2007, is now moot. Furthermore, applicant respectfully submits that the repeated taking of Official Notice, together with maintaining that applicant's traversal thereof is not timely or adequate, is arbitrary and capricious and denies applicant due process of law. Given that during the prosecution of this application eight different statements of Official Notice were taken, which positions were traversed and which traversals never resulted in the citing of a single document supporting any of the statements of Official Notice, applicant wonders if any traversal of Official Notice could possibly be sufficient or timely in this application to cause the examiner to cite a

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teaching reference in support of any position of Official Notice. To put this another way, it appears that during the prosecution of this application, the examiner has hid behind the pretext of Official Notice, in order to avoid citing prior art to support the eight statements of Official Notice. According to M.P.E.P. §2144.03, Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. If the Official Notice cited during the prosecution of this application was capable of instant and unquestionable demonstration as being well-known, why cannot the examiner easily cite supporting documents therefor? The failure to cite such supporting documents demonstrates that the Official Notice statements (1)-(8), as alleged during the prosecution of this application, are in fact not Official Notice, and therefore should be withdrawn.

According to M.P.E.P. § 2144.03, while "Official Notice" may be relied on, these circumstances should be *rare* when an application is under final rejection or action under 37 C.F.R. §1.113. Applicant respectfully submits that eight separate statements of Official Notice cannot be considered a *rare* circumstance, and demonstrates that the taking of these eight separate statements of Official Notice oversteps the boundaries set forth in M.P.E.P. § 2144.03.

Most importantly, applicant respectfully submits that the limitations in claims 33-64 cannot be simply dismissed as common knowledge or within the skill of the art, and thus, considered to have no limiting effect when comparing the claims with prior art references, as alleged in the final Office Action. This appears to be an attempt to circumvent basic patent principles laid down by the U.S. Supreme Court and the Court of Appeals for the Federal Circuit, which have repeatedly held that to ignore limitations in claims disregards several mainstay patent

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doctrines. See, e.g., *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U.S. 405, 419 (1908) ("[T]he claims measure the invention."); *Pennwalt Corp. v. Durand-Wayland, Inc.*, 4 USPQ2d 1737 (Fed. Cir. 1987) (*in banc*), *cert. denied*, 485 U.S. 1009 (1988); *Perkin-Elmer Corp. v. Westinghouse Elec.*, 3 USPQ2d 1321 (Fed. Cir. 1987); *Lemelson v. United States*, 224 USPQ 526, 533 (Fed. Cir. 1985). Since the rejection of applicant's claims does not establish or show the common knowledge and the skill of the art concerning Official Notice statements (1)-(8), the structures and operations defined in the present claims corresponding thereto cannot be anticipated or rendered obvious by the teachings of Melby and/or Gudat, which were cited thereagainst in the final Office Action.

The Advisory Action expanded the Official Notice statement (8) by stating that in machines, in a business or company, decisions and information are passed down according to a hierarchal structure, and a regional supervisor would pass down decisions and information to store/branch supervisor, who in turn would pass down decisions and information to their employees. Applicant respectfully submits that there is no equivalent or commonality between machines, a business or a company as proffered in this statement. Machines operate differently and by different parameters than a business or a company. Applicant respectfully submits that the examiner must cite a teaching reference in the area of a work machine management system for work machines that distributes work instructions *only* to a leader machine, and the leader work machine transmits the work instructions to other work machines of the plurality of work machines through a first communication means, based on the transmitted management information, as required in the independent claims of this application, before a *prima facie* case of obviousness can be established in the present factual situation. Therefore, applicant

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respectfully request that the examiner reconsider and withdraw any rejection of the present claims based on the teachings of Melby and/or Gudat and the foresaid alleged statement (8) of common knowledge.

At the end of the Advisory Action, it was asserted that in view of KSR, it would have been obvious to apply an old technique (providing information to a leader that further propagate information to subordinates, as cited in Official Notice statement (8)) recognized as part of the ordinary capabilities of one skilled in the art, to a known device (using work machines to perform work) would have yielded predictable results specifically, using work machines to distribute information and perform work tasks in accomplishing goals/instruction set forth by distributed information. Applicant respectfully submits that *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007) in no way supports the conclusion of obviousness in the present factual situation. Firstly, KSR never relied on Official Notice. All the conclusions of obviousness in KSR were based on prior art documents, not Official Notice. Quite opposite to the position set forth in the Advisory Action, KSR held

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art. To facilitate review, this analysis should be made *explicit*. But it need not seek out precise teachings directed to the challenged claim's specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ. (Emphasis added.)

In order for an analysis of a conclusion of obviousness to be *explicit* for review, there must be a written record and/or documentary support. Official Notice statements do not provide a written record and/or documentary support required for an explicit review of obviousness as required by the United States Supreme Court in KSR. Therefore, the examiner should reconsider

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and withdraw any rejection of the present claims based on the previously mentioned eight statements of common knowledge or Official Notice.

*Prior Art Rejection*

Claims 33-64 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,952,680 of Melby *et al.* (Melby) in view of U.S. Patent No. 5,646,844 of Gudat *et al.* (Gudat). This rejection spans pages 4-54 of the Official action. Applicant respectfully submits that the inventions defined in claims 33-64 are patentably distinguishable from the teachings of Melby and/or Gudat for the reasons set forth in the responses filed on March 20, 2006 and February 12, 2007, and *especially those set forth at pages 23-30 of the response filed on October 9, 2007*, which are incorporated herein by reference.

In addition, applicant respectfully submits that the inventions defined in independent claims 33, 38, 42, 46, 48, and 62 define a work machine management system including, *inter alia*, the following structures and arrangements:

- (i) management information production means automatically producing management information based on said work machine information and on said data stored in said database, provided at said server apparatus; and/or
- (ii) said server apparatus automatically producing a scheduled work plan or automatically produces said management information based on said transmitted work machine information and on said data stored in said database.

The teachings of Melby and/or Gudat do not contemplate or suggest the previously mentioned structures and arrangements (i) and (ii) as required in independent claims 33, 38, 42,

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46, 48, and 62. For at least the foregoing reasons, applicant respectfully submits that the above-mentioned structures and arrangements (i) and (ii) are not contemplated or suggested by Melby and/or Gudat within the meaning of 35 U.S.C. §103(a). Therefore, applicant respectfully submits that independent claims 33, 38, 46, 48, and 62, as well as the claims that depend thereon, are patently distinguishable from the teachings of Melby and/or Gudat and any rejection of applicant's claims over these teachings should be reconsidered and withdrawn.

In summary, applicant respectfully submits that, as described above, the cited prior art of Melby and Gudat, either taken alone or together with the eight statements of Official Notice (or common knowledge in the art) as set forth in the outstanding Office action, do not show or suggest the combination of features recited in claims 33-64 within the meaning of 35 U.S.C. §103. Therefore, applicant respectfully requests a formal allowance of these claims.

The foregoing is believed to be a complete and proper response to the Official action mailed on May 7, 2007. While it is believed that all the claims in this application are in condition for allowance, should the examiner have any comments or questions, it is respectfully requested that the undersigned be telephoned at the below listed number to resolve any outstanding issues.

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In the event that this paper is not timely filed, applicant hereby petitions for an appropriate extension of time. The Commissioner is hereby authorized to charge the fee therefor, as well as any deficiency in the payment of the required fee(s) or credit any overpayment, to our deposit account No. 50-1147.

Respectfully submitted,

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